

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9075 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

ARJIBHAI J RABARI

Appearance:

1. Special Civil Application No. 9075 of 1994
MR YOGESH S LAKHANI for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/04/2002

ORAL JUDGEMENT

Heard Mr.Y.S.Lakhani, learned advocate appearing on behalf of the petitioner Corporation.

Though notice of Rule has been served on the respondent, none remained present on behalf of the

respondent, nor any advocate seems to have engaged by the respondent in this proceeding and therefore this matter is taken up for final hearing even in absence of the respondent workman.

The petitioner Corporation has challenged the award passed by the labour court, Surat in Reference No.142 / 1991 dated 19th August, 1993, wherein the labour court has granted reinstatement without backwages of the interim period. Learned advocate Mr.Lakhani for petitioner Corporation has submitted that the respondent workman was on duty on 11th July, 1988 went in drunken condition to Songadh Depot at 22.00 Hrs and at that time, misbehaved with the Shift Incharge Shri A. N. Jamadar Art-A. On the basis of this allegation, complaint was filed and ultimately chargesheet was served which resulted into dismissal of the respondent workman vide order dated 4th November, 1988. Mr.Lakhani has further submitted that the labour court has committed gross error while granting reinstatement to the respondent workman despite of the clear finding that the misconduct is found to have proved against the respondent workman. However, he also submits that no punishment is imposed by the labour court while granting reinstatement to the workman as respondent has foregone the claim of backwages by filing separate Purshis. Therefore, the labour court has wrongly exercised the powers under Section 11-A of the I.D.Act, 1947 which required to be interfered with by this Court .

I have considered submissions made by learned advocate Mr.Lakhani. Before the Labour Court, statement of claim has been filed by the respondent workman vide Exh.7 and written statement was filed by the petitioner vide Exh.8. Thereafter, the respondent workman has admitted the legality and validity of the departmental inquiry vide Exh.13 and requested the labour court that he is not pressing the claim of the backwages of the interim period and requested to reinstate the workman. On that basis, either side had not led any oral evidence and therefore, the labour court has examined the merits of the matter and after considering the past record of the respondent workman, the labour court has come to the conclusion that this was serious misconduct of misbehaving with the higher officer while in drunken condition but ultimately the labour court has come to conclusion that looking to the unemployment period of the respondent workman and considered the punishment of dismissal as harsh and granted reinstatement without backwages of the interim period. The labour court has also considered one more aspect that backwages has not

been pressed by the respondent workman. In light of above facts, in view of this Court, while coming to the conclusion by the labour court committed an error and mere denial of backwages cannot be considered to be penalty to the respondent workman. Therefore, some punishment must have to be imposed by the labour court on the respondent workman especially when the misconduct serious in nature, is found to be proved. This aspect has been totally ignored by the labour court and not imposed any punishment on the respondent workman. The Apex Court has considered case based on identical facts when the driver was found in drunken condition while driving the vehicle. In that case, the Apex Court has granted reinstatement with continuity of service but imposed punishment of stoppage of three increments with cumulative effect and confirmed relief of reinstatement. This view is taken by the Apex Court in case of JASWANT SING VS. PEPSU ROADWAYS TRASPORT CORPON reported in AIR 1984 SC 355. Relevant observations made in para-3 & 4 are referred as under :-

"3. We are also clearly of the opinion that a driver of a passenger bus or for that matter any mechanically propelled vehicle cannot and should not consume intoxicating liquor while on duty because that endangers the safety not only of those in the vehicle but of those using the roads also. However, looking to the conduct of the appellant it appears to his first offence and the labour Court in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act was of the opinion that in the facts of the case punishment of dismissal was rather heavy and was not called for and therefore, reduced the punishment. But the reduction was to a level namely mere refusal of back wages, which would be inadequate punishment in the facts of this case.

4. Having heard Mr.R.S.Sodhi, learned counsel for respondent employer, we are of the opinion that the Labour court was right and justified in directing reinstatement of the appellant in service. Further appellant is not entitled to backwages for the reasons that appealed to Labor Court. This is not adequate penalty for the misconduct proved. In our opinion to keep the appellant within the bounds of well disciplined conduct a further punishment is also called for and should be imposed so that our humanistic approach may not induce him to repeat his intemperate performance. Accordingly,

we direct that the appellant should not be given three increments in the time scale in which he would be reinstated, for the next three years. For all other benefits, he will be treated as continuing in service. The appeal is allowed to the extent herein indicated with no order as to costs."

In view of above observations made by the Apex Court, when the driver was found in drunken condition while driving the vehicle, the Apex Court has considered that punishment of dismissal is harsh and punishment of stoppage of three increments with cumulative effect is considered to be just and proper. Furthermore, it is also pertinent to note that though award granting reinstatement is challenged in this petition, wherein this Court has granted interim stay on 13th July, 1994, inspite of this fact, the petitioner Corporation has reinstated the respondent workman in service and the respondent workman has been working with the petitioner Corporation for more than eight years. Therefore also, in such situation, it would not just and fair for this Court to disturb the reinstatement of the respondent workman and hence, at the most, in the interest of justice, in view of this Court, some punishment can be imposed on the respondent workman.

Therefore, considering the totality of the facts and circumstances of the case, when misconduct serious in nature is found to have proved, some punishment must have been imposed by the labour court and therefore, award in question required to be interfered with by this Court to that effect only. Therefore, it is directed to the petitioner Corporation to imposed punishment of stoppage of three increments with cumulative effect on the respondent workman. However, it is made clear that this Court is not inclined to disturb the relief of reinstatement granted in favour of the respondent workman and the same would remain unaltered. Accordingly, this petition stands partly allowed. The award in question passed by the Labour Court, Surat in Reference No.142 / 1991 dated 19th August, 1993 is modified to the effect that the respondent workman has to suffer punishment of stoppage of three increments with cumulative effect but the relief of reinstatement is not disturbed by this Court. Rule is made absolute accordingly. No order as to costs.

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